

**TOWN INCORPORATION
CHAPTER 36, TITLE 15.2**

(Incorporates changes through 2008 General Assembly session)

I. Basis for Incorporation

This chapter authorizes the incorporation of a community with a minimum population of 1,000 persons.

II. Procedure for Initiating Action
(Sec. 15.2-3600, Code of Va.)

- A. The residents of any community may initiate an action for incorporation by petition to the circuit court of a county.
1. The petition must be signed by at least 100 qualified voters residing in the area to be incorporated.
 2. The petition must be accompanied by a plat prepared by a registered surveyor showing the boundaries of the proposed town.
 3. The petition must be served on appropriate officials of the affected county.
 4. The petition must be advertised and posted in order to inform the residents of the affected area of the proposed incorporation.

III. Court Proceeding
(Sec. 15.2-3602, Code of Va.)

- A. Legal Standard for Incorporation. The court must find that:
1. The incorporation will be in the best interest of the inhabitants of the proposed town;
 2. The petition for incorporation is reasonable;
 3. The general good of the community will be promoted by the incorporation;
 4. The population of the proposed town exceeds 1,000 persons;
 5. The land area contained within the proposed town is not excessive;
 6. The population density of the affected county does not exceed 200 persons per square mile; and
 7. The services required by the area seeking to be incorporated cannot be provided by the establishment of a sanitary district or the extension of existing services currently provided by the county.

B. Assistance of the Commission on Local Government
(Sec. 15.2-3601, Code of Va.)

The court may request the Commission on Local Government to conduct a review of the proposed incorporation prior to the court's hearing on the petition. If requested, the Commission will conduct a hearing to determine if the criteria for incorporation have been satisfied. At the Commission's hearing, all interested parties, including the affected county, may present evidence. In addition, the Commission will hold a public hearing on the matter. The Commission is required to transmit its findings to the court in writing.

C. Order for Incorporation
(Sec. 15.2-3602, Code of Va.)

If, after a hearing on the petition for incorporation and receipt of the report from the Commission on Local Government, the court determines the criteria for incorporation have been satisfied, the court will enter an order incorporating the area described in the petition as a town. Thereafter, the residents of the incorporated area shall be a body, politic and corporate, with all the powers, privileges and duties conferred upon and appertaining to towns under the general law.

1. The newly incorporated town, however, can perform no municipal services or contract any debt until after its governing body is elected.

IV. Elections
(Sec. 15.2-3604, Code of Va.)

A. The court order incorporating the town will also include provisions for electing members of the town's initial governing body.

1. Date of Election. At least 90 days from the date of the incorporation but not within 120 days of a general election.
2. Offices for Election. As specified by the Code of Virginia, there shall be elected a five-member town council.
3. Length of Service. The five council members will serve until their successors are elected pursuant to the provisions of the charter granted to the new town by the Virginia General Assembly.

V. Town Charter
(Sec. 15.2-3603, Code of Va.)

A. At the session of the Virginia General Assembly following its incorporation, the town shall request that body to grant it a charter. Until the town is granted a charter, the affairs of the town shall be governed by the general law provisions of the Code of Virginia.

1. A charter is a special act of the General Assembly which provides for the structure of and confers powers on a specific municipality, and most municipalities rely on their charter for the authority they exercise. In addition, where inconsistencies exist between the general law provisions of the Code of Virginia and a municipal charter, charter provisions will take precedence over general law.

Staff
Commission on Local Government
June 2008